

### **Remarks**

This Amendment is in response to the Office Action dated **February 2, 2009**. Claims 9, 10, 13-22 and 24-30 are pending in this application. The Office Action rejected claims 17, 20, 29 and 30 under 35 USC § 102 over Pinchasik (US 5449373); rejected claims 17, 20, 29 and 30 under 35 USC § 102 over Palmaz (US 5102417); rejected claims 16, 25, 26 and 28 under 35 USC § 103 over Pinchasik in view of Kleshinski (US 5902317); rejected claims 16, 25, 26 and 28 under 35 USC § 103 over Palmaz in view of Kleshinski; rejected claims 9, 10, 13-15, 21, 22 and 24 under 35 USC § 103 over Israel (US 5733303) in view of Pinchasik and Kleshinski; rejected claims 18 and 19 under 35 USC § 103 over Palmaz or Pinchasik in view of Lau (US 5514154).

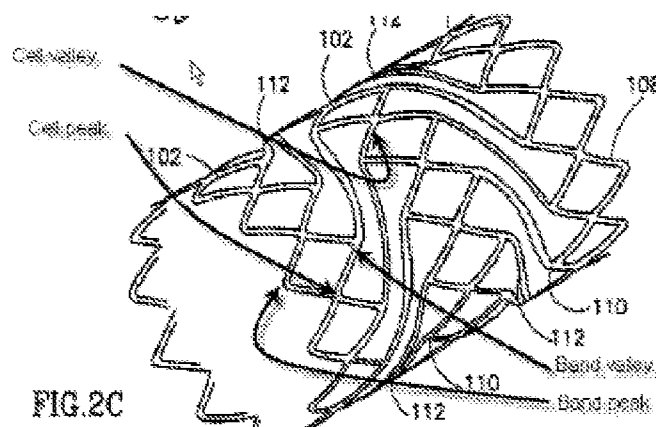
The rejections presented in the Office Action are traversed. Reconsideration in view of the following remarks is requested.

### **Claim Rejections – 35 USC § 102 (Pinchasik)**

The Office Action rejected claims 17, 20, 29 and 30 under 35 USC § 102 over Pinchasik. These rejections are traversed.

Claim 17 recites “an expandable framework defining a tubular body having a plurality of cells... each cell of the stent defined by two of the connecting members and portions of two different serpentine bands.”

The rejection characterizes Pinchasik segments 102 as the claimed “serpentine bands” and the Pinchasik links 112 as the claimed “connecting members.” See Office Action at pages 2-3. The rejection provides the following marked Figure 2C from Pinchasik.

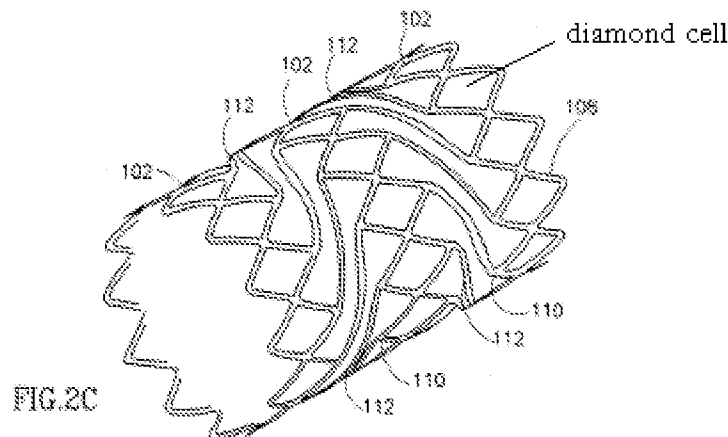


The rejection has labeled cell peaks and valleys and separate band peaks and valleys on the Pinchasik Figure above; however, the arbitrary labeling does not establish a disclosure of the subject matter of claim 17 in Pinchasik.

Claim 17 recites serpentine bands comprising “alternating peaks and valleys” and “connecting members, each connecting member connected between a peak and a valley.” Thus, the “peaks” and “valleys” recited in claim 17 are those of the serpentine bands, and the rejection asserts an unreasonable construction of the claim by reading in separate cell peaks/valleys.

Additionally, claim 17 requires each cell of the stent to be “defined by two of the connecting members and portions of two different serpentine bands.”

Pinchasik does not meet the language of claim 17 because some of the “cells” are not bounded by a link 112. See e.g. annotated Figure 2C of Pinchasik, provided above. Each segment 102 includes cells that are defined entirely by the segment/“band” structure. For example, see the cell marked “diamond cell” in Figure 2C below.



The rejection argues that the term “cell” has no special definition, and although certain openings in the Pinchasik stent are considered “cells,” the diamond shaped openings in Pinchasik are not “cells” within the meaning of the rejected claims. See Office Action at page 3. This assertion is traversed.

The term “cell” is intended to be interpreted as a person of ordinary skill in the art would interpret a stent cell – as an opening in the stent framework. A person of ordinary skill in the art would consider the diamond shaped openings of Pinchasik to be stent cells – for example, “cells” as recited in the preamble of claim 17; however, the diamond shaped openings of Pinchasik

do not meet the specific requirements of a cell recited in the body of claim 17 – that each cell of the stent be “defined by two of the connecting members and portions of two different serpentine bands.” Therefore, the diamond shaped openings of Pinchasik are “cells,” but Pinchasik does not disclose or suggest a stent that meets each limitation of claim 17.

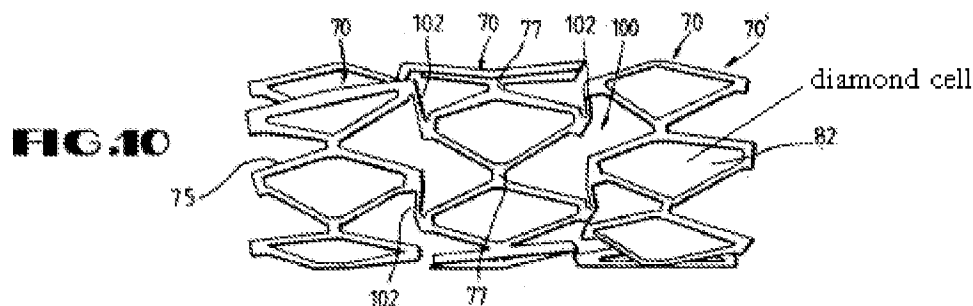
Therefore, claim 17 is patentable over Pinchasik under 35 USC § 102. Claims 20, 29 and 30 each depend from claim 17 and are patentable over Pinchasik for at least the reasons discussed with respect to claim 17. Accordingly, Applicants request withdrawal of the rejections under 35 USC § 102 over Pinchasik.

### **Claim Rejections – 35 USC § 102 (Palmaz)**

The Office Action rejected claims 17, 20, 29 and 30 under 35 USC § 102 over Palmaz. These rejections are traversed. The issues relevant to this rejection are similar to the rejection over Pinchasik, discussed above.

Claim 17 recites “an expandable framework defining a tubular body having a plurality of cells... each cell of the stent defined by two of the connecting members and portions of two different serpentine bands.”

Palmaz does not meet the language of claim 17 because some of the “cells” are not bounded by a connector member 102. See e.g. annotated Figure 10 of Plamaz, provided below. Each expandable member 70 includes cells that are defined entirely by the expandable member/“band” structure. For example, see the cell marked “diamond cell” in Figure 10 below.



Therefore, Applicants assert that Palmaz does not disclose or suggest each limitation of claim 17, and that claim 17 is patentable over Palmaz under 35 USC § 102. Claims 20, 29 and 30 each depend from claim 17 and are patentable over Palmaz for at least the reasons

discussed with respect to claim 17. Accordingly, Applicants request withdrawal of the rejections under 35 USC § 102 over Palmaz.

**Claim Rejections – 35 USC § 103 (Pinchasik/Palmaz and Lau)**

The Office Action rejected claims 18 and 19 under 35 USC § 103 over Palmaz or Pinchasik in view of Lau. These rejections are traversed.

Claims 18 and 19 depend from claim 17. In the above sections discussing rejections under 35 USC § 102, Applicants assert that neither Pinchasik nor Palmaz disclose or suggest each limitation of claim 17.

The addition of Lau to the applied references does not remedy the lack of disclosure in Pinchasik and Palmaz. Lau was applied for the disclosure of Nitinol, and the rejection proposes to make the stent of Pinchasik or Palmaz from Nitinol. See Office Action at pages 7-8.

Even if the modifications to Pinchasik or Palmaz proposed in the rejection were performed, the resulting device would not meet all of the limitations of claims 18 or 19, and the Office Action has not presented a *prima facie* case of obviousness against claims 18 or 19. Applicants request withdrawal of the rejection of claims 18 and 19 under 35 USC § 103.

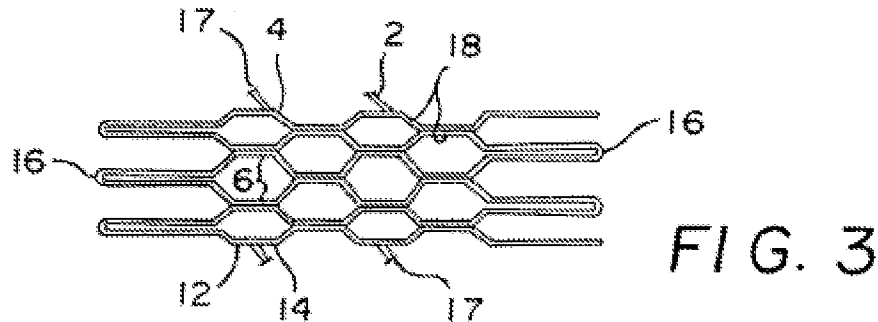
**Claim Rejections – 35 USC § 103 (Pinchasik/Palmaz)**

The Office Action rejected, under 35 USC § 103, claims 16, 25, 26 and 28 over Pinchasik in view of Kleshinski; and claims 16, 25, 26 and 28 over Palmaz in view of Kleshinski. These rejections are traversed.

Claim 16 recites “an expandable framework defining a tubular body having a plurality of cells...wherein each cell of the stent is bounded at a first end by a portion of one annular element, at a second end by a portion of another annular element, and by two of the connecting members which extend between the one annular element and the other annular element.”

The limitations of claim 16 reproduced above are similar to the limitations of claim 17 discussed in the above sections addressing rejections under 35 USC § 102. Neither Pinchasik nor Palmaz discloses or suggests a stent that meets the limitations of claim 16.

Kleshinski teaches a self-expanding stent having a tubular body portion 14 and fingers 16 at the ends. See Figure 3, provided below. The fingers 16 “facilitate a gradual reduction in radially outward extending pressure exerted by the stent.” See column 4, lines 5-8.



The Office Action proposes to add Kleshinski’s fingers 16 to the ends of the stents disclosed by Pinchasik or Palmaz. See Office Action at pages 4-6.

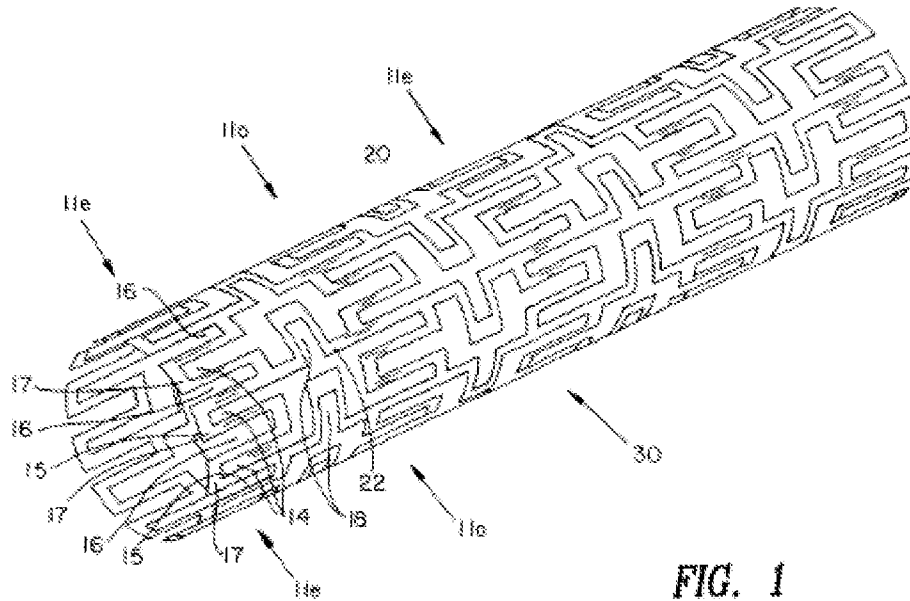
Even if the Kleshinski fingers 16 were added to either of the Pinchasik or Palmaz stents, the resulting device would still include the cells that are not bounded by a “connecting member.” Therefore, the device proposed in the rejection would not meet the limitations of claim 16, and claim 16 is patentable over Pinchasik or Palmaz in view of Kleshinski under 35 USC § 103. Claims 25, 26 and 28 depend from claim 16 and are patentable for at least the reasons discussed with respect to claim 16. Applicants request withdrawal of the rejection of claims 16, 25, 26 and 28 under 35 USC § 103.

### **Claim Rejections – 35 USC § 103 (Israel)**

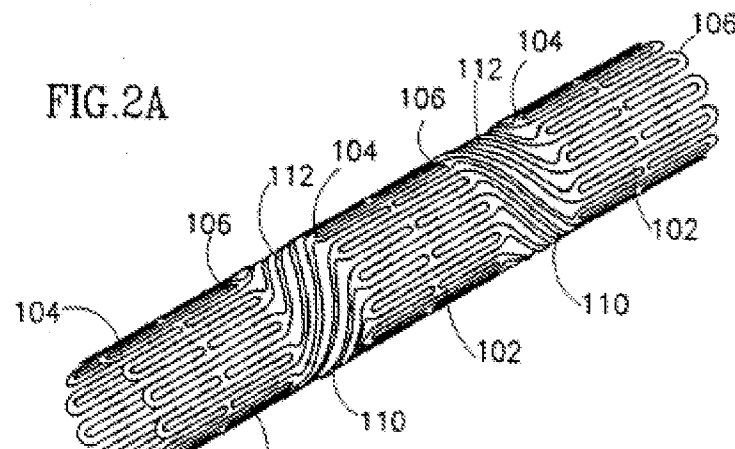
The Office Action rejected claims 9, 10, 13-15, 21, 22 and 24 under 35 USC § 103 over Israel (US 5733303) in view of Pinchasik and Kleshinski. These rejections are traversed.

The rejection does not establish a *prima facie* case of obviousness because a person of ordinary skill in the art would not have been motivated to modify Israel in view of Pinchasik as proposed in the rejection. Further, even if the modifications to Israel were performed, the resulting device would not meet the limitations of the rejected claims.

An example of the Israel stent is shown below.



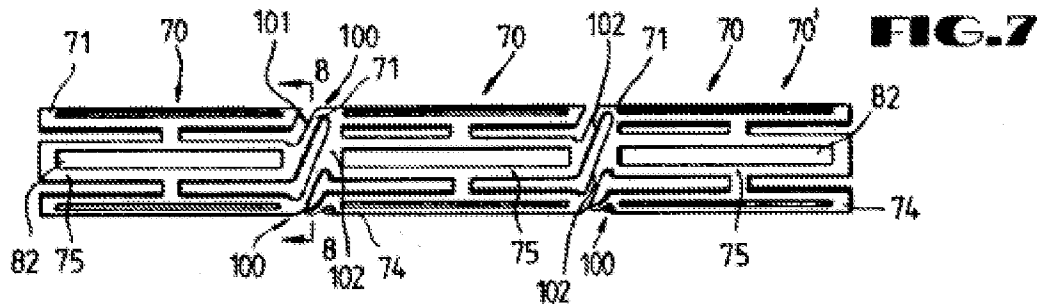
The rejection proposes to modify the Israel stent by offsetting the cells/bands from one another and using circumferentially offset/helical connectors as taught by Pinchasik. See Office Action at page 6 and Pinchasik Figure 2A, provided below.



Thus, the rejection proposes to utilize the connector configuration from Pinchasik in the Israel stent.

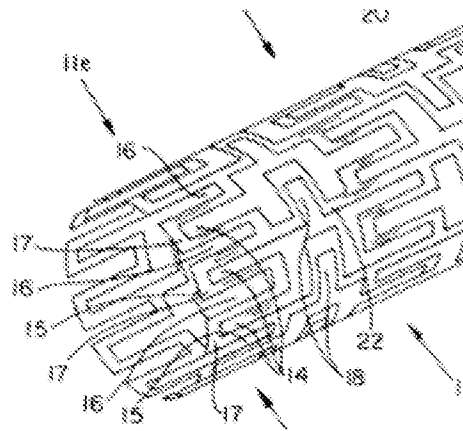
A person of ordinary skill in the art would not have been motivated to use a connector configuration as taught by Pinchasik because Israel specifically teaches away from the use of such helical connectors. Israel discusses the Palmaz patent (US 5102417) in the Background section. Palmaz teaches a stent having helical connectors similar to those of Pinchasik; however, the Palmaz connectors are much shorter than the helical connectors in

Pinchasik. See e.g. Palmaz Figure 7, provided below.



In discussing Palmaz, Israel warns that “helical connectors twist,” and states that “The twisting motion is most probably harmful to the blood vessel.” See column 1, lines 35-44. Thus, Israel teaches away from using helical connectors as shown in Palmaz Figure 7, provided above, which cause adjacent band segments to twist relative to one another.

Israel then teaches a stent wherein the connecting segments extend between longitudinally aligned band portions – a stent design that avoids the “twist” associated with helical connectors.



In view of Israel’s teachings with respect to Palmaz, a person of ordinary skill in the art would not be motivated to modify Israel in a way that would result in helical connectors as taught by Palmaz/Pinchasik. The Pinchasik connectors are longer than the Palmaz connectors, and would result in a greater degree of twist. Therefore, a person of ordinary skill in the art would not have modified the Israel stent as proposed in the rejection.

Further, claim 9 recites “the valley portions of the first annular element having the same shape as the peak portions of the first annular element.” If the modification to Israel proposed by the rejection in view of Kleshinski were performed, the resulting device would not

meet this limitation.

The rejection proposes to modify the Israel stent by modifying an end segment to have “fingers” as taught by Kleshinski. Such a modification would change one end of the end segment, but not the other. The resulting end segment would have “valley portions” of a different shape than the “peak portions” due to the fingers, and the device proposed in the rejection would not meet the limitations of independent claim 9.

The rejection does not propose to modify Israel in a way that would result in an end segment having less compression resistance than another annular segment, wherein the valley portions and peak portions of the end segment have the same shape.

Therefore, Applicants assert that claim 9 is patentable over Israel in view of Pinchasik and Kleshinski under 35 USC § 103. Claims 10, 13-15, 21, 22 and 24 depend from claim 9 and are patentable for at least the reasons discussed with respect to claim 9. Applicants request withdrawal of the rejection of claims 9, 10, 13-15, 21, 22 and 24 under 35 USC § 103.



**Conclusion**

Based on at least the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 9, 10, 13-22, 36-26 and 28-30 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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